
Costs Decision

Site visit made on 21 February 2023

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 07 March 2023

Costs application in relation to Appeal Ref: APP/Z5630/D/22/3306462 4 Alfred Road, Kingston Upon Thames KT1 2UA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Richard Templer for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - The appeal was against the refusal of planning permission for demolition of existing extensions and erection of single storey rear extension that extends 6m, is less than 3.0m high at the eaves and 3.675m high at the highest point of the roof ridge.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
3. The first reason for refusal relates to a failure to indicate that the materials used in any exterior work of the proposed development would be of a similar appearance to those used in the construction of the exterior of the existing dwelling house in conflict with condition A.3(a) of Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
4. The GPDO adds that the local planning authority may refuse an application where, in the opinion of the authority the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with the conditions, limitations or restrictions applicable to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g).
5. The proposed extension would extend beyond the rear wall of the original detached dwellinghouse by more than 4 metres and not by more than 8 metres. Therefore, the proposal would exceed the limits in paragraph A.1(f) but would be allowed by paragraph A.1(g). As such, the Council did not behave unreasonably in terms of procedure by refusing the application on the basis of

insufficient information to establish whether the development would comply with the conditions.

6. The existing and proposed materials were annotated on the drawings. However, the requirement of paragraph A.3(a) is that the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. While I have come to a different view, the Council behaved reasonably by exercising planning judgement that the submitted information did not demonstrate that the materials would have a similar appearance to that of the existing building. Therefore, in substantial terms, the Council did not behave unreasonably in this respect.
7. Turning to the second reason for refusal, paragraph A.4.7 states that where any owner or occupier of any adjoining premises objects to the proposed development, the prior approval of the local planning authority is required as to the impact of the proposed development on the amenity of any adjoining premises.
8. In this case only the occupier of No 6 Alfred Road (No 6) objected to the proposal and the Council assessed the impact of the proposal on this adjoining premises. An assessment of the impact of the proposal on other adjoining properties was not mentioned in the Council's report.
9. However, as prior approval was refused on the basis of harm to one adjoining property, this determination would not have been altered by the Council setting out any lack of harm to other adjoining properties. Therefore, even if the Council behaved unreasonably in this respect in procedural terms, since the prior approval application would have been refused in any event, the Applicant would still have incurred expense in the appeal process.
10. The proposal would result in an increase of height and depth compared with the existing extension. The proposed drawings indicate the eaves height at a level some distance below the lowest point of the roof slope. While this height would be similar to the eaves height of the existing building, the lowest point of the proposed roof slope would be a height noticeably greater than existing as indicated in the clarification drawing submitted with the appeal. Therefore, although I have come to a different view, the Council did not behave unreasonably in substantial terms by considering that the proposal would result in harm to the living conditions of neighbouring occupiers.
11. With respect to development plan policies, a prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. The principle of development is established through the grant of permission by the GPDO.
12. However, development plan policies may be relevant, but only insofar as they relate to the matters and only as evidence to support the planning judgement to be made.
13. Although development plan policies are cited in the second reason for refusal on the decision notice, the Council's report clearly sets out an assessment of the impact of the proposed development on the amenity of any adjoining premises, as required by paragraph A.4.7 of the GPDO. In any event, even if

the Council behaved unreasonably by including development plan policies in the decision notice, this has not resulted in wasted expense in the appeal process.

14. I note the evidence regarding pre-application advice, However, there is little substantive evidence before me to indicate that any unreasonable behaviour in this respect has led to wasted expense in the appeal process.
15. Accordingly, I consider that the Council has not failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision. The Applicant had to address those concerns and the evidence of third parties in any event.

Conclusion

16. Consequently, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Sabu

INSPECTOR